IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16498 of 2005

Date of Decision: 11-08-2005

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AJAY SHASHIKANT PATEL - Petitioner
Versus
SPORTS AUTHORITY OF INDIA & Others - Respondents

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[See Next Page for Full Title]

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting?

For Petitioner:

MR RK MISHRA

For Respondents:

MR BN DOCTOR

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1 The petitioner, posted at Sports Authority of India (for short SAI'), NSWC, Gandhinagar, is transferred to SAI, NS NIS, Patiala, with immediate effect and directed to report to the Regional Director (Academics), SAI, NS NIS, Patiala, immediately vide

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Whether Reporters of Local Papers may be allowed to see the Judgment?

order dated April 19, 2005 passed by Sports Authority of India (Personnel Division). Aggrieved by this order, he filed Original Application No.252 of 2005 before the Central Administrative Tribunal (for short `the CAT'), Ahmedabad Bench, Ahmedabad. However, it has been dismissed by order dated 29-07-2005, therefore, it is assailed through this Special Civil Application.

2. Briefly, it is pointed out that petitioner is General Secretary, Employees Unions of Group B, C & D, therefore, he addressed letters to higher authorities mentioning misuse of power and position by the Dy. Director and the then Director, SAI, Gandhinagar. Accordingly, he has been transferred, although Group C employees are not transferable from one region to another. Further, there is no post of Film Operator Projectionist at NIS Patiala, while the post at Gandhinagar is kept vacant. His children are studying in Gujarati medium school, therefore, his transfer would cause inconvenience. Transfer is also effected with a view to curb the activities of the Association.

3. Respondents state that petitioner could be transferred as per rules. Charge-sheet dated 15.04.2005 had been served on him on 28.04.2005. Initially petitioner was appointed on 29.01.1991. His services were not confirmed, therefore, discontinued on 28.04.1993. This order was unsuccessfully challenged by him

through writ petition. He was given fresh appointment in 1996 on assurance of proper behaviour in future. However, after seeking the appointment and becoming General Secretary of the Union, he forgot his promise and started brow-beating the Officers. SAI was initially running academic courses at Gandhinagar. They were discontinued and shifted to NIS Patiala. Recommendation for deployment of petitioner elsewhere had been sent in January 1998. SIU in its study did not find the need for this post. These recommendations were accepted on 04.04.2003. Accordingly, petitioner had been assigned other jobs, which he performed without protest. The transfer is in administrative exigencies and public interest. Recognition of Association has also been withdrawn.

4. Through rejoinder, petitioner submitted that reply should be rejected since it has been filed by Ms. Meena Bora, Deputy Director, Officiating Incharge, SAI, NSWC, Gandhinagar, against whom allegations of mala fides had been made. The transfer order does not use the expression `public interest' and no reasons have been assigned in the order, which is against the Rules. Reasons for transfer have only been mentioned in the reply, namely, incident in office of 06.02.2005, which was photographed by the petitioner. Shri Santosh had also lodged a counter FIR.

The Assistant Director had also assaulted another person for which FIR was lodged and incident reported in newspapers. Besides, Sewa Ram, Advocate of the Association in Supreme Court had also written to DG, SAI about this incident. Secondly, charge sheet has been issued. The transfer has been made before completion of inquiry, therefore, bad. It tends to curb the activities of the Association. The petitioner could not have been transferred under the Rules.

5. It is reasserted in the sur-rejoinder that transfer order and charge sheet have been issued after a preliminary inquiry on receipt of report from SAI, Gandhinagar. Ms. Meena Bora (respondent-3) submitted her reply to SAI headquarters on the allegations levelled against her and the same was accepted. Further, mention of activities by petitioner is made. When services of the petitioner were not found satisfactory even during extended period of probation, he was discontinued vide order dated 28.04.1993. Challenge against the said order was withdrawn. He submitted representation dated 31.05.1996 followed by affidavit dated 14.06.1996 for reinstatement in service. Through this affidavit, petitioner undertook to work in the interest of the organisation and not to indulge in such activities or enterprise, which would be against the organisation. Therefore, appointment

order was issued vide letter dated 26.06.1996 making it clear that his past service could not be counted for any purpose and he would pay SAI Rs.6,750/- incurred on legal services. SAI, Gandhinagar, informed headquarters vide letter dated 05.01.1998 that coaching for diploma course had been discontinued as per decision of the governing body, and the services of petitioner were not required at the centre. Arrangement was made for his transfer along with post to any other centre or corporate office so that it could be better utilised. Petitioner has been assigned some other duties. The Staff Inspection Unit of Government of India, Ministry of Finance had carried out a work study of SAI. Secretary, SAI's letter dated 12.09.2000 shows that the post of FOP was not required and that surplus staff be identified and further action taken for diverting/posting of surplus persons to newly created centres. Qua the allegations against Deputy Director and the then Director, the Officer conducing the inquiry asked the petitioner vide letter dated 04.03.2004 to make available details of each point with available documents. On 06.02.2005 (Sunday), Meena Bora, Dy. Director and Officiating Director Incharge informed the headquarters on 07.02.2005 about the incident which took place on 06.02.2005 that the petitioner came to the office with Santosh K. and entered her chamber. Petitioner started taking photograph

of Meena Bora and that of Mr. Rathod, Asst. Director and the computer. When Mr. Rathod objected, he was beaten. Petitioner also misbehaved with her. Petitioner smashed the telephone wire when she was trying to telephone police authorities. The police compliant had been lodged against these two persons. Police protection was also requested. Copy of Report submitted by Assistant Director, R.S. Rathod and copy of the FIR lodged in this regard were enclosed. Other names of persons available have also been stated having knowledge about this incident. After receiving the report, headquarters conducted another inquiry, thereafter issued charge sheet dated 15.04.2005 and ordered immediate transfer.

6. Giving consideration to the matter quite extensively, CAT dismissed the Original Application giving comprehensive reasons, with which we find ourselves in agreement. Rules 19(b) and (e) of SAI (Service) Bye-laws and Conditions of Service Regulations, 1992, envisage as under:

> ***"(b) Every officer of the Society holding post carrying a scale of pay equivalent to the scale of Group `B' (non-gazetted) post under the Central Government and Group `C' and Group `D' employees shall be liable to serve anywhere in the respective regions in which they are appointed.***
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> ***(e) Notwithstanding anything contained in the para (a) to (d) above any employee may be transferred***

from one Region to another Region or to Central office or vice-versa on administrative grounds or in the public interest with the approval of Director General."

7. From the above quoted subclause (e), employee can be transferred from one region to another on administrative grounds or in public interest with the approval of Director General. The impugned order of transfer has been passed with such approval. Petitioner refers to Circular, but it is applicable to Central Government employees. Unless it is adopted by SAI, much cannot be said about it, more so, when no stress was made on it during submissions advanced in the case. Petitioner emphasised that he should not have been transferred till inquiry was completed and respondents having done so, order is liable to be set aside. We are unable to appreciate this submission, particularly in the facts and circumstances of this case. Petitioner had not been performing duties satisfactorily despite extension of probation, therefore, his services were dispensed with. On his assurance of good behaviour, his representation was allowed and appointed afresh. Despite discontinuance of the diploma course, his services were not dispensed with, rather assigned other duties, which he performed without objection. He started creating problems in the office making the functioning difficult. Ultimately, inquiry was

initiated against him. With this background, Apex Court decision in ***Union of India and others vs. Janardhan Debanath and another [(2004) 4 SCC 245]*** aptly applies. The Apex Court said in paragraph 14 that:

> ***"The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an inquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate inquiry is to be insisted upon, the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated."***

8. Accordingly, transfer is unassailable, therefore, contention to the contrary is rejected. The allegations of mala fides are not sustainable. Respondent-3 reported what happened in the office. Reports were examined by the head office before action was taken and it was found necessary to shift the petitioner from SAI Institute, Gandhinagar, in public interest after the approval from the competent authority. In ***Dipak Kumar Sarkar vs. Union of India [1999(3) ATJ 709]*** the Calcutta Bench said:

> ***"16. In a recent case from Bombay High Court,***

reported in 1999(4) SLR 125 (Arun Damadar Veer v. State of Maharashtra & Ors.), the Division Bench followed the decision of the Supreme Court rendered in the case of S.L. Abbas (supra) and also another judgment of the Apex Court, reported in 1994(6) SCC 98 (N.K. Singh v. Union of India & Ors.), where in the latter case, it was reiterated that unless the order of transfer is vitiated by mala fides or infraction of any professed norms or principles governing the transfer which alone can be scrutinized by the judiciary, there are no judicially manageable standards for scrutinising the stand and the Courts lack the necessary expertise for personnel management of all the Government Departments. In the aforesaid Bombay High Court case, the decision rendered by the Apex Court, reported in AIR 1995 SC 1056 (State of MP & Anr., v. S.S. Kourav) was relied upon, where the Apex Court has observed as follows:-

> ***"The Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation."***

Regarding the issue of personal hardship raised in the aforesaid case, the Apex Court observed that it could not go into the question of relative hardships and it would be for the administration to consider the facts of a given case and mitigate in the interest of good and efficient administration. Following the aforesaid decision of the Apex Court, the Bombay High Court has held that transfer in as incidence of

service and more so for the Government officers it is not to be interfered with by the Court unless it is shown to be clearly arbitrary vitiated by mala fides or it amounts to infraction in professed norms or principles governing the transfer."

9. Case of malafides against respondent-3 is not made out. Transfer is for justification and in public interest and issued with the approval of the competent authority.

10. No other submission was advanced.

Consequently, there is no merit in this petition and the same is dismissed.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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